THE HON'BLE SRI JUSTICE N.V. RAMANA

W.P. No. 15818 of 2002

Oral order:

Assailing the letter dated 24.07.2001, issued by the 1st respondent, namely the Executive Engineer, A.P. Housing Board, calling upon the petitioner to pay Rs. 1,06,742/- towards interest and incidental charges worked out upto 31.08.2001, the petitioner filed the present writ petition.

Responding to an advertisement issued by A.P. Housing Board for allotment of HIG plots, the petitioner submitted his application, and he was allotted a plot at Bhavanipuram, Vijayawada. The petitioner states that pursuant to the allotment, he paid all the instalments, and accordingly, he was handed over the plot vide Handing Over letter dated 04.06.1990. While so, the petitioner states, that after lapse of a decade, on 16.08.2000, the 1st respondent issued letter dated 16.08.2000 demanding the petitioner to pay a sum of Rs.95,307/- towards difference of cost and interest calculated upto 31.08.2000 and other processing charges. Subsequently, the 1st respondent issued the present letter dated 24.07.2001, impugned in the writ petition, demanding a sum of Rs.1,06,742/- towards difference of cost and interest calculated upto 31.08.2001 and processing charges.

The learned counsel for the petitioner submits that the action of the 1st respondent in issuing the impugned letter demanding the petitioner to pay a sum of Rs.1,06,742/-, after lapse of a decade from the date of handing over the plot, and that too without issuing any notice, is illegal and arbitrary. He submits that the impugned demand

letter, claiming the amount mentioned therein along with interest, is beyond the terms and conditions of the contract. He submitted that the petitioner is ready and willing to pay the principal amount, but disputes payment of interest. He submitted that even though the demand arises out of a contract, but since respondents are a public body, writ petition under Article 226 of the Constitution of India, is maintainable. He further submitted that since the writ petition was admitted and was pending before this Court for more than four years, the same has to be adjudicated on merits, without relegating the petitioner to the alternative remedy. In support of this argument, he placed reliance on the judgment of the apex Court in **Bareilly Development Authority v. Ajay Pal Singh**[1].

The respondents filed counter. The learned Standing Counsel for the respondents reiterating the counter-averments has taken objection as to the very maintainability of the writ petition contending that since the dispute raised by the petitioner arises purely out of a contractual agreement entered into between the petitioner and the respondents, his remedy, is to approach the competent civil Court, and in support of this argument, he placed reliance on the judgment of this Court in W.P. No. 8923 of 2002, dated 20.06.1997 and W.P. No. 29366 of 1997, dated 30.03.2005. He further submitted that in the allotment letter, only tentative cost of the plot has been fixed at Rs.235/- sq. yd., and it was clearly mentioned that final cost of the plot will be intimated later. As per Condition No. 8 of the allotment letter, the allottee shall accept any revision in the cost of the plot intimated by the office, and therefore, the petitioner cannot contend that the impugned demand, is bad, and more so when the petitioner conveyed his acceptance, within 15 days from the days of its receipt and also paid the tentative cost.

Heard the learned counsel for the petitioner and the learned Standing Counsel for the respondents-AP. Housing Board.

Admittedly, the petitioner was allotted a plot vide letter of allotment dated 20.08.1988. In the said letter, the tentative cost was fixed at Rs.235/- sq.yd., which worked out to Rs.62,745/-. The petitioner conveyed his acceptance to the said letter of allotment, which *inter alia* contains several other conditions. As per clause 8 thereof, the allottee shall accept any revision in the cost of the plot intimate by the office. It is in invocation of this clause, and taking into consideration the fact that they had to pay more towards land acquisition compensation to the land losers, they respondents enhanced the price, and accordingly demanded the amount mentioned in the impugned letter. The law is well settled that no writ or order can be issued under Article 226 of the Constitution of India so as to compel the authorities to remedy a breach of contract pure and simple. In fact, the apex Court in **Bareilly Development Authority v. Ajay Pal Singh**, considering similar issue held as follows:

> When the contract entered into by the State is non-statutory and purely contractual, the relations are no longer governed by the constitutional provisions, but by the legally valid contract which determines the rights and obligations of the parties inter se. In this sphere, the parties can only claim rights conferred upon them by the contract in the absence of any statutory obligations on the part of the authority in the said contractual field. It is also settled that no writ or order can be issued under Article 226 of the Constitution of India so as to compel the authorities to remedy a breach of contract pure and simple.

A Full Bench of the Delhi High Court in **Sheelwanti v. Delhi Development Authority**[2], considering the issue whether the price fixed for the flat/plot by the authority, is legal or illegal, which in fact, is also raised before this Court by the petitioner, held as follows:

> In view of Clauses 13 and 14 of the brochure and the transaction being contractual, this Court cannot interfere under Article 226 of the Constitution in the matter of pricing/costing of flats, including escalation of cost of land, etc.

The above two judgments, were referred to the apex Court approvingly in **Delhi Development Authority v. Ashok Kumar Behal**[3]. The petitioner having accepted the terms and conditions of

the letter of allotment, and having regard to the judgments referred to above, now cannot be allowed to contend that the respondents are not entitled to raise the demand after lapse of more than a decade.

Though the petitioner contends that no notice whatsoever was issued before raising the impugned demand letter, the fact remains, the material papers filed by the respondents, particularly letter dated 24.03.2000 addressed by the respondents shows that they have arrived the final cost of the plot at Rs.1,22,100/-, and though thereafter, he was requested to pay the same, the petitioner did not pay the same, and ultimately, after lapse of two and a half years, after receipt of the impugned demand letter, he filed the writ petition assailing the same.

Merely because the respondents are a public body, it does not mean, writ petition filed against them has to be entertained despite the fact that the writ petition raises disputed questions of fact. The petitioner, though assailed the demand letter, the fact remains, such demand raised by the respondents arises out of a contractual agreement entered into by the petitioner and the respondents, and since the writ petition raises disputed questions of fact, namely whether the respondents are justified in raising the demand, and if so, whether they are entitled to claim interest thereon or not, the adjudication of the same require adducing of evidence by the parties, and therefore, the remedy of the petitioner is to approach the competent civil Court and file civil suit, but certainly writ petition under Article 226 of the Constitution of India, is not a remedy, and more so on the ground that the respondents are a public body.

In the result, the writ petition is dismissed. However, the petitioner is at liberty to avail the remedies available to him under law. No costs.

N.V. RAMANA, J.

Date: 21st November, 2007.
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[1] AIR 1989 SC 1076
[2] AIR 1995 DELHI 212 (FB)
[3] AIR 2002 SC 2940